90-790

Supreme Court, U.S.
FILED
SEP 24 1990
JOSEPH F. SPANIOL, JR.
CLERK

No.

In The Supreme Court of the United States

October Term, 1990

MATTHEW SETERA, PETITIONER, PRO SE

V

JOHN TEMME

D. Craig Landin

Jim Mattox

George W. Kunze

Frank E. Vandiver

Respondents

A P P E N D I X

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

Matthew Setera, Petitioner, Pro Se

9 Cumberland Street

Cumberland, Rhode Island 02864

18A

A P P E N D I X

Appendix. . . . . Ai

US District Court Order. A1, A2

Petition for Writ of Mandamus
. . . . . A3, A4, A5, A6

Appeal Motion. A7

Appeal Judgment Order. . . A8, A9, A10

Petition for Rehearing. . . . A11, A12

Related Matters:

(On Mandamus). A13, A14, A15

(On Newspaper Clippings). . . A15, A16

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

MATTHEW SETERA, PLAINTIFF

VS. C.A. NO. H-87-3763

JOHN TEMME, ET AL., DEFENDANTS

ORDER

The matter now before the Court is th e Deffndants' Motion to Dismiss filed on D ecember 24, 1987 (Instrument #15). As gro unds for dismissal the defendants urged, a mong other things, Rule 12 (b)(6): that t he complaint failed to state a claim upon which relief can be granted. By its Order of September 15, 1988, the Court warned th e plaintiff that the complaint did, in fac t, fail to state a claim upon which relief can be granted. The Court ordered that th e plaintiff file a proper amended complain t by October 3, 1988. The plaintiff has f

ailed to do so. Thus, the Court today dis misses the complaint as failing to state a claim upon which relief can be granted and because of plaintiff's contumacious behavi or. It is therefore

ORDERED, ADJUDGED and DECREED that th is case be and it is hereby DISMISSED.

SIGNED this 25th day of October, 1988, at Houston, Texas.

John V Singleton

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 89-2243

USDC No. CA-H-87-3763

IN RE:

MATTHEW SETERA,

Petitioner.

- - - - - - - - - - - - - - - -

Petition for a Writ of Mandamus

to the United States District Court

for the Southern District of Texas

- - - - - - - - - - - - - - - -

Before REAVLEY, KING, and WILLIAMS, Circuit Judges

BY THE COURT:

Matthew Setera complains in his writ of mandamus that the district judge has dismissed his civil action at defense counsel's "bidding" and has therefore "not avoid

ed the appearance of impropriety but rather has given credence to an enhanced (and) enlarged conspiracy to prevent (the) case from having its effect." He requests that this court order (1) that the district court case be transferred to the Eastern District of Louisiana so that we can monitor the proceedings; (2) that the fees to process this petition be "extracted" from the district court; (3) that defense counsel be removed from the case and from representing defendants in all cases; (4) that the district court grant all the relief he has requested in his lawsuit and any he may request in the futrure "as the occasion demands."

J S

T M R

C D K

Setera moreover requests that all judges on this Court from Texas be disqualified from sitting on the panel to adjudicate this petition. As he has alleged no actua

l bias on the part of any judge, we constr ue Setera's request as a motion brought pu rsuant to 28 U.S.C. 455, and DENY the moti onoas unfounded.

The mandamus remedy is an extraordina ry one, granted only in the clearest and m ost compelling cases in which a party seek ing mandamus shows that no other means exi sts to attain the requested relief and tha t the right to the issuance of the drit is "clear and indisputable." In re Willy, 831 F 2d 545, 549 (5th Cir. 1987). The first of Setera's requests, that the matter be t ransferred, is moot, a final judgment havi ng been entered in the case. As to his re quests that the district court pay the fee s for this petition and that defense couns el be removed, we conclude that mandamus r elief is inappropriate. Finally, as to Se tera's request that we order the district

court to grant all relief requested in his lawsuit, we note that Setera possesses adequate means to attain the requested relief, which he has employed, by the filing of a notice of appeal from the district court's dismissal of his case.

The petition for a writ of mandamus is DENIED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 89-2097

USDC # H-87-3763

MATTHEW SETERA,

Plaintiff-Appellant

versus

JOHN TEMME ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

ORDER:

As this Court has today entered an der denying appellant's petition for wri of mandamus (89-2243), IT IS ORDERED tha appellant's motion for a stay of the prc edings on appeal pending dispostion of t e petition is DENIED as moot.

THOMAS M. REAVLEY

United States Circuit Juc

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 89-2097

Summary Calendar

MATTHEW SETERA,

Plaintiff-Appellant.

versus

JOHN TEMME ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for the Southern District of Texas

(H 87 3763)

(April 12, 1990)

Before CLARK, Chief Judge, WILLIAMS and DUHE, Circuit Judges.

PER CURIAM:*

Matthew Setera, a pro se litigant, filed a civil rights suit under 42 U.S.C. 19

83 against two members of the grievance co mmitteeeof the Texas State BAr Association; Jim Mattox, attorney general of the State of Texas; George W. Kunze, former dean of the graduate college of Texas A & M Univer sity; and Frank E. Vandiver, president of Texas A & M University. On September 15, 1988, the district judge ordered that Sete ra file an amended complaint on or before September 30, 1988, for the purpose of cla rifying Setera's underlying facts and clai ms. Specifically, the court ordered Seter a to set forth facts sufficient to pierce the qualified immunity of the state offici als. See Elliot v. Perez, 751 F.2d 1472 (5th Cir. 1985). The docket shows Setera' s certificate of service states that the a mended complaint was served by mail on Sep tember 30, 1988.

On October 25, 1988, the district cour t dismissed the action and stated; "(t)he Court ordered that the plaintiff file a pr

oper amended complaint by October 3, 1988. The plaintiff has failed to do so. Thus, the Court today dismisses the complaint as failing to state aclaim upon which relief can be granted and because of the plaintiff's contumacious behavior." It is possible that the district court believed that no amended complaint had been filed. No comment was made indicating that the filing was late. Because a mistake may have prompted the dismissal of Setera's suit, we remand for clarification or further action. We express no judgment as to the sufficiency of the amended complaint.

The judgment of the district court is VACATED, and this case is REMANDED to the district court for further proceedings.

---

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that rule, the court has determined that this opinion should not be published.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 89-2097

MATTHEW SETERA,

Plaintiff-Appellant,

versus

JOHN TEMME, ET AL.,

Defendants-Appellees

Appeal from the United States District Court for the Southern District of Texas

---

ON SUGGESTION FOR REHEARING EN BANC

(Opinion 04-12-90, 5 Cir., 198_, __F.2d__)

(May 25, 1990)

Before CLAR, Chief Judge, WILLIAMS and DUHE', Circuit Judges.

PER CURIAM:

(X) Treating the suggestion for rehearing

All

en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the pan el nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Federal Ru les of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

CHARLES CLARK

Chief Judge

CLERK'S NOTE: SEE FRAP AND LOCAL RULES 41 FOR STAY OF THE MANDATE. REHG-8

RELATED MATTERS: (ON MANDAMUS)

Firstly, in regards to the denial of the M andamus" Petition, the main argument has a lready been given within the body of this petition in which a certain circuit judge of the en banc panel which denied Mandamus being a common member to the local judicia ry as the US District Judge & the main def endants, all of the same locale, could hav e & should have dismissed or disqualified himself as having a compelling interest to produce a weigh factor so as to impair or warp the judgement; it is well known that familiarity breeds comptempt, then familia rity likewise warps the judgments; theref ore such influence of the same is likely t o be extended to the rest of the circuit c ourt!

Secondly, no Texas judge should have a say in the judgments of this case, as the bott om line is: the fair & just adjudication of this case can only result in an ancilla

ry effect on taxes (symonymous with Texas) in all aspects (oil, gas, alcohol, real estate, property taxes...) the latter ones especially affecting Texas circuit judges, but not affecting those of Lousiana or Mis sissippi (only a trickling/triffling effec t is dectected). It too, is well known th at the Federal courts in Texas are inundat ed with case bankruptcies: notably of the banking & realty industries (due in no sma ll part to improper mores of moral & ethic al violation/consideration.); also there is a cloud or cloak of clandestine manueve rings to dismiss as many as possible under the guise of JUSTITIA OMNIBUS, resulting i n a travesty on justice.

Thirdly, no Texas judges can properly or adequately adjudicate this case without pl aintiff having recourse to a chnge of venu e and preferably outside of the Fifth Circ uit! The cloak of words used in the circu

it opinions is easily discernible & the ma tters petitioner is presenting are self-evident even among the circuit judges.

RELATED MATTERS: (ON NEWSPAPER CLIPPINGS)

In regards to the newpaper clippings (ten (10) have been lodged with the court for i ts perusal & study) on mores, moral & ethi cal values; one entitled "He's the court' s supreme conscience" is notable as the in ference is, that the court has none! (oft times acting in a lackadaisical non common sensical manner). We know inanimate thing s have no conscience; we know the animal kingdom has no conscience (except for the species homo sapiens (humanis)); we kn w that animals do however, have a conscieous ness about them which includes the human s pecies and this latter is uniquely determi ned to have a conscience as well but may

be deadened through various means as if lo ngstanding scorched with a hot iron or gen etic defects or other inhibiting factors to its exercise & use; common sense exper ience so indicates.

Another article refers to the public educa tion system: "Our children need these (mo ral) values. Our society requires them. We, as a nation, can teach them. We must teach them now-" the need is quite genera l, all aspects & segments of our society need them!